

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1955 of 1994

to

SPECIAL CIVIL APPLICATION No 1967 of 1994

with

SPECIAL CIVIL APPLICATION No 1954 of 1994

and

SPECIAL CIVIL APPLICATION No 9401 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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TATA CHEMICALS LTD

Versus

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UNION OF INDIA

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Appearance:

None present for Petitioners  
MR JD AJMERA for Respondents

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CORAM : MR.JUSTICE S.K.KESHOTE

C.A.V. JUDGEMENT

1. As in all these Special Civil Applications common grounds and identical issues have been raised, I consider it to be appropriate to take them together for hearing and decide the same under this common order. The facts of the case are being taken from Special Civil Application No.1955 of 1994:

The petitioners by this Special Civil Application under Article 226 of the Constitution of India challenge the Notification No.U-23013/15/86-L.W.(Vol.II) dated 17th March 1993, annexure 'A' to the petition, prohibiting under section 10(1) of the Contract Labour (Regulation and Abolition) Act, 1970 (hereinafter referred to as 'the Act'), with effect from the date of publication of the same, i.e. 3.4.83, the employment of contract labour in the Limestone & Dolomites Mines in the country for the following works:

- (i) Raising of minerals including breaking, sizing, sorting of lime stone/ domomite and
- (ii) Transportation of lime stones/ dolomites which includes loading into and unloading from trucks, dumpers, conveyance and transporting from mine site to factory.

Further challenge has been made to the order of respondent No.4 dated 20.1.94, annexure 'B' on the record, under which the licence granted to petitioner No.3 under the Act was revoked and cancelled with immediate effect. This licence was valid upto 4th May 1994. Under the aforesaid order, the petitioner No.3 as well as the petitioner-Company were ordered not to engage any contract labour in the prohibited category and revoked in respect of the said category certification of registration of the Company also.

2. The facts of the case in brief are that the petitioner No.1 is a Company limited by shares and is incorporated and registered under the provisions of the Companies Act, 1956. The second petitioner is one of the share holders of the Company, petitioner No.1. The petitioner No.3 provides contract labour to the Company in connection with works specified in the impugned notification in its Lime and Dolomite Mines. The petitioner No.1-Company is engaged in the business of manufacturing heavy chemicals, e.g. inorganic, photographic, insecticides, pesticides, and other

miscellaneous chemicals including caustic soda and soda ash. The petitioner No.1 claims itself to be the biggest soda ash manufacturer in India. The Limestone is the basic raw material for manufacturing soda ash, as per the petitioners' case and that raw material it needs in large quantity. The petitioner No.1-Company holds on lease, Limestone mines centered in Junagadh and Jamnagar Districts. It also purchases Limestones from private lease holders of Limestone mines which engage contract labour for working in the mines. The petitioner No.1 made a grievance that the impugned notification has been published by respondent-Union of India without giving an opportunity of hearing to the petitioner-Company and without the consultation with the Central Advisory Contract Labour Board. The Company submitted to the second respondent, a representation dated 21st June 1993, and it further made an application dated 14th July 1993 for exemption under section 34 of the Act. The third respondent by its letter dated 20th July 1993 advised the Company to stop employment of contract labour for the work of Limestone, raising an excavation, including breaking sizing, etc. The Company vide its letter dated 4th August 1993, informed the third respondent that the Company had made application for exemption under section 34 of the Act, that the same was under consideration and that the third respondent should bear with the Company till the Company receives reply to the said application. The Company received from the section officer in the Ministry of Labour, Government of India, a letter dated 12th August 1993, informing the Company that the matter was under consideration of the Government. Since no response was received from respondents No.1, 2 and 3, the petitioners No.1 and 2 filed Special Civil Application No.940 of 1993 before this Court and this Court on 13/30 September 1993, issued notice pending admission returnable on 11.10.93. That petition is stated to be pending before this Court. On 24.1.94, the petitioners No.1 and 2 filed an application being Civil Application No.190 of 1994 for restraining the third respondent from instituting or proceeding with any prosecution against the Company for any violation of the impugned notification and for staying, qua, the Company, pending hearing and final disposal of the said petition, operation, implementation and execution of the said Notification and provisions contained therein and from enforcing and implementing the same against the Company. This Court, on 27.1.94, issued Notices of that application to the third respondent returnable on 4.2.94. On 29.1.94, the petitioner No.3 received a copy of the order dated 20.1.94 revoking the licence of the petitioner No.3 with immediate effect and advising the

petitioner No.3 not to engage any contract labour in the prohibited categories under the impugned Notification. Alongwith copy of the letter dated 20.1.94 there is endorsement that the certificate of registration of the Company bearing No.ALC/ADPR/Regn:15/NCM/91 dated 19th July 1991, stands revoked in respect of the above stated categories with immediate effect. Further advice has been given to the petitioner No.1 not to engage contract labour in the said prohibited categories and to amend its certificate of registration accordingly. The petitioners No.1 and 2 and contractor M/s.Sharda Trading Company, made an application being Civil Application No.251 of 1994, in this Court for adding to Special Civil Application No.9401 of 1993, the said contractors as co-petitioners and the respondent No.4 herein as respondent No.4 to the said petition. The said Civil Application came to be decided by this Court under the order dated 1.2.94 and that application was rejected. Hence this petition by the petitioners.

3. This petition has been contested by respondents and a detailed reply to the same has been filed. In the reply, the respondents have come up with the case that vide subsequent Notification dated 4th July 1996, Entry No.2 in the impugned Notification has been substituted by the new Entry. It has further been stated that the Entry No.2 has been amended by the Central Government as various representations were received against the Notification dated 17th March 1993. Another contention has been raised that the petition filed by petitioners in a form in view of the subsequent Notification dated 4th July 1996, does not survive and is liable to be dismissed. On merits it has been contended that the Notification dated 17th March 1993 has been issued after consultation with the Central Advisory Contract Labour Board. That Notification subsequently on representations filed by the affected persons has been modified to the extent where it was found necessary. The power of the Central Government under section 10 of the Act is there for prohibiting of contract labour in the particular categories of employment and when the Central Government has exercised that power, in such matters, the petitioners may not have any much say.

4. In the Special Civil Application, the petitioners made reference to the Special Civil Application No.9401 of 1993, but what ultimately has happened in that petition has not been stated by either of the parties to these petitions. The petitioners in these Special Civil Applications have also made a reference to certain petitions filed in the Delhi High Court, but what

ultimately has been decided in those petitions also has not been brought on record by either of the parties.

5. In the reply to the Special Civil Applications, the respondents have stated only that much of the fact that the Court has not granted interim relief in favour of the petitioners.

6. In the petition, the petitioners raised the contentions, which in brief, are as follows:

(a) Before issuing the impugned notification, the Central Government has not given any notice or opportunity of hearing to the affected persons.

(b) The general prohibition of the employment of Contract Labour in the scheduled works in the Limestone & Dolomite mines in the country is not contemplated under sec.10(1) of the Act, 1970.

(c) Without prejudice to the aforesaid submissions, the petitioners urged that the impugned notification prohibits the employment of Contract Labour in the scheduled works in the Limestone & Dolomite mines in the country in general, is in violation of Article 14 of the Constitution of India, and is void.

(d) The list annexure 'D' of Limestone and Dolomite mines in India shows that there are hundreds of Limestone & Dolomite mines in India located in the States of Gujarat, Orissa, Andhra Pradesh, Haryana, Bihar, Maharashtra, Himachal Pradesh, Madhya Pradesh, Rajasthan, Tamilnadu, Karnataka, West Bengal, Union Territory of Delhi, Kerala etc. and they produce different grades of Limestone/Dolomite eg. chemical grade, flux grade, cement grade and low grade which would be suitable for use in different industries and for different purposes. The conditions of work and the benefits provided for Contract Labours are different in different Limestone and Dolomite mines in the country, but the Central Government has treated all Limestone & Dolomite mines in the country uniformly in the matter of employment of Contract Labour in the scheduled works which is violative of Article 14 of the Constitution.

(e) Before issuing the impugned notification there has been no effective consultation by the Central Government with the Central Advisory Contract Labour Board. The grievance is made that the Central Government refuses to part with any information with respect to the alleged consultation and what report, if any, submitted

by the Central Board to the Central government.

(f) Before issuing the impugned notification, the Central Government did not have any regard to the factors mentioned in section 10(2) of the Act, 1970 with respect to Limestone & Dolomite mines in the country in general, much less with respect to each particular establishment.

(g) Before issuing the impugned notification, the Central Government did not have any regard to the conditions of work and benefits provided for the Contract Labour in the Limestone and Dolomite mines in general or in any particular Limestone.

(h) Before issuing the impugned notification, the Central Government did not have any regard to the following questions:

(a) whether the scheduled processes, operations or works are incidental or necessary for the industry, trade, business, manufacture or occupation that is carried on in the concerned establishment:

(b) whether scheduled processes, operations and works are of perennial nature for all establishments operating the Limestone and Dolomite mines in the country:

(c) whether the schedule works are carried out in the Limestone and Dolomite mines in general or in a given Limestone and Dolomite mines in a particular ordinarily through Contract Labour.

(i) Before issuing the impugned notification, the Central Government did not have regard to the fact that it would not be sufficient to employe considerable number of whole time workmen in the scheduled operations in any of the Limestone and Dolomite mines in the country.

(j) The Central Government did not have regard to the conditions of work and benefits provided for the Contract Labours in the establishment of the company.

(k) The abolition of Contract Labour system could result in unemployment in the remote and rural areas as under the present law, the principal employer cannot be forced to take all the Contract Labour under its employment.

(l) The contention has further been raised that the

action of the respondent of revoking and cancelling the licence of petitioner No.3 as well as the revocation of the certificate of registration of the petitioners pending hearing and final disposal of the petition aforesaid as well as the civil application No.190/94, is highly arbitrary and unjustified.

7. This special civil application has been filed in the Court on 7th February 1994 and on 14th February, 1994, notice has been issued returnable on 18th February, 1994. After 18th February, 1994, I do not find anything on record of this special civil application that the petitioners have press the same for early hearing of the matter for admission. After 14th February, 1994, the next order sheet is of date 4th February, 1997 on which date, the matter has been adjourned to 21st February, 1997. On 21st February, 1997, the matter has been adjourned to 18th March, 1997 on which date, the Court has admitted the petition and it was directed to be heard finally in the month of June, 1997 with special civil applications No.9401/93 and 1954/94. The matter has come up before this Court on 20th June, 1997 and on which date, the matter was called out for hearing in three rounds but none put appearance for the petitioners and it has been adjourned to 27th June, 1997. On 27th June, 1997 again though the matter was called out for hearing in three rounds but none put appearance for the petitioners and the matter has been adjourned to 7th July, 1997 to give one more opportunity to the petitioners. On 8th July, 1997, the matter was taken up and in the first round when the matter has been called out for hearing Shri A.M. Kapadia counsel appeared for Shri S.B. Vakil and made a request for passing of the matter as Shri Vakil was reported to be busy in another Court. The matter was ordered to be passed over. In the second round when the matter was taken up none was present. In the third round again Shri Kapadia requested that Shri Vakil is busy in another Court and matter may be adjourned. This request has been accepted and the matter has been adjourned to 11th July, 1997. On 11th July, 1997, the counsel for the petitioners was present but the matter has been adjourned on the request of the counsel for the respondent for 12th August, 1997. On 12th August, 1997, the matter has been adjourned to 26th August, 1997. On 26th August, 1997, the matter has been adjourned to 9th September, 1997 on which date the matter has been adjourned to 19th September, 1997. On 19th September, 1997, the matter was called out for hearing in the first round and Shri Kapadia counsel who appeared for Shri Vakil prayed for passing over the matter as Shri Vakil was stated to be busy in another Court. Thereafter

the matter has been called out in the second round and third round but none put appearance for the petitioners and the arguments of the counsel for the respondents were heard and after perusing the special civil application the order was kept reserved. I stated all these facts to show how these matters are being taken up by the petitioners in this Court.

8. A detailed reply to the special civil application has been filed by the respondents, copy of which has been given to the counsel for the petitioners on 21st August, 1997. The rejoinder to the reply has not been filed, and as such, whatever averments made in the reply affidavit stand uncontroverted. It is really a sorry state of affairs that the respondent-Union of India has also acted in a most careless manner. In reply, reference has been made to the notification dated 4th July, 1996 and it has been stated therein that the copy of the same is annexed to the reply as annexure 'R-1' but this document has not been filed on the record. However, the contents of the document have been reproduced in para-3 of the reply and those contents have not been disputed by the petitioners.

9. So the fact is that the entry No.2 of the notification dated 17th March, 1993 has been substituted by another entry, on which there is no dispute between the parties. The prohibited categories of employment are loading and unloading of Limestone and Dolomite into and from trucks, dumpers, conveyors and transportation within the mine sites only. As per the substituted entry, the prohibition is only in the employment of Contract Labour of raising of minerals including breaking, sizing, sorting of Limestone/Dolomite and loading and unloading of Limestone and Dolomite into and from trucks, dumpers, conveyors and transportation within the mine sites. The transportation of limestone and Dolomite which includes the loading into and unloading from the trucks, dumpers, conveyors and transportation from mine site to factory is now not a prohibited category in the schedule employment. However, I do not agree with the contention raised by the learned counsel for the respondent that in view of this subsequent notification these writ petitions do not survive. At the most, it can be said that the part of the grievance of the petitioners would have been redressed but it cannot be said that these writ petitions have become infructuous.

10. The learned counsel for the respondent contended that the power of judicial review of this Court in the matter of the orders passed by the Central Government under section 10 of the Act, 1970 are very limited.

The learned counsel for the respondent submitted that the impugned notification has been issued by the Central Government in consultation with the Central Advisory Contract Labour Board. In the Central Advisory Contract Labour Board, five persons were there representing the employers and seven persons were on Board representing the employees. On the composition of committee, the employers were represented by the National Mineral Development Corporation Limited and Federation of Indian Mineral Industries. So the learned counsel for the respondent urged that major industries like steel, cement which consume about 90% of the Limestone and Dolomite produce in the country as well as the Federation of Indian Mineral Industries, a body corporate, which represents the mineral industries as a whole, were represented on the committee as well as the Central Advisory Contract Labour Board. Normally three member tripartite committee from amongst the members of the Central Advisory Contract Labour Board is constituted but in the present case having in mind the vital interest and vast number of Limestone and Dolomite mines in the public and private, both captive and non-captive, spread all over the country and a number of user industries, a seven member committee was constituted to go into the question of working of Contract Labour system in the Limestone and Dolomite mines in the country. The seven member committee after making in depth study of the Contract Labour system in the Limestone and Dolomite mines and the validity and availability of essential amenities like drinking water, first aid, shelters, urinals, latrines, washing facilities, canteen, creches etc. submitted report recommending prohibition of Contract Labour in the Limestone and Dolomite mines in the country. The report submitted by the Committee was placed before the Central Advisory Contract Labour Board under the Act and after consultation with the said Board and following the process of law and keeping in view the guidelines laid down in clauses (a) to (d) of sub-section (2) of section 10 of the Act, 1970, the impugned notification has been issued by the Central Government to which no exception can be taken. In the reply, details of how the report has been prepared by the Committee has been given out.

11. It has next been contended that in the matter of prohibition of the Contract Labour employment in specified works, the principles of natural justice are not required to be followed. The Central Government under section 10 of the Act, 1970, exercises quasi-legislative functions and the principles of natural justice cannot be invoked in such matters. In support of this contention, the counsel for the respondent placed

reliance on the decision of this Court in the case of South Gujarat Textile Processors' Association vs. State of Gujarat reported in 1994 (1) GLH 94.

12. The other contentions raised in the petition have also been controverted. It is contended that the orders annexure 'B' as well as annexure 'C' are the consequential orders of the notification dated 17th March, 1993. When the Central Government has prohibited the employment of Contract Labour in the categories of the employments in the scheduled works in the said notification then the licence of the petitioner No.3 as well as the certificate of registration of the petitioner No.1 have rightly been revoked.

13. I have given my thoughtful consideration to the contentions raised by the petitioners in the special civil application and the submissions made by the learned counsel for the respondents.

14. Before dealing with the contentions raised by the petitioners aforesaid and the counsel for the respondents, I consider it to be appropriate to have a glance at the relevant provisions of the Act, 1970.

15. Section 3 of the Act, 1970 makes a provision for constitution of the Central Advisory Board to advise the Central Government on such matters arising out of the administration of the Act as may be referred to it and to carry out other functions assigned to it under the Act.

16. Sub-section (2) of section 3 of the Act, 1970 relates to the constitution of the Board.

17. Section 5 of the Act, 1970 lays down that the Central Board or the State Board, as the case may be, may constitute such committees and for such purpose or purposes as it may think fit.

18. Section 7 provides that every principal employer of an establishment to which this Act applies shall, within such period as the Government may, by notification in the Official Gazette, fix in this behalf with respect to the establishments generally or with respect to any class of them, has to make an application to the registering officer in the prescribed manner for the registration of the establishment.

19. Section 8 empowers the registering officer to revoke the registration of an establishment on the ground as mentioned therein and after hearing the establishment

and with the previous approval of the appropriate Government.

20. Section 9 of the Act, 1970 provides for the effect of the revocation of the registration.

21. Section 10 of the Act, 1970 is a material provision for the present case and I consider it to be appropriate to reproduce the same, which reads as under:

10. Prohibition of employment of contract labour:

(1) Notwithstanding anything contained in this Act, the appropriate Government may, after consultation with the Central Board or, as the case may be, a State Board, prohibit, by notification in the Official Gazette, employment of contract labour in any process, operation or other work in any establishment.

(2) Before issuing any notification under sub-section (1) in relation to an establishment, the appropriate Government shall have regard to the conditions of work and benefits provided for the contract labour in that establishment and other relevant factors, such as --

(a) whether the process, operation or other work is incidental to, or necessary for the industry, trade, business, manufacture or occupation that is carried on in the establishment ;

(b) whether it is of perennial nature, that is to say, it is of sufficient duration having regard to the nature of industry, trade, business, manufacture or occupation carried on in that establishment ;

(c) whether it is done ordinarily through regular workmen in that establishment or an establishment similar thereto :

(d) whether it is sufficient to employ considerable number of wholetime workmen.

22. Section 12 of the Act, 1970 relates to the licensing of contractors and section 13 contains a provision for grant of licences.

23. Section 14 of the Act, 1970 empowers the licensing authority for cancellation and for revocation or suspension of licence.

24. Section 15 of the Act, 1970 makes a provision for appeal against the order made under sections 7, 8, 12 or 14.

25. Chapter V of the Act, 1970 contains provisions regarding the welfare and health of the contract labourers.

26. Section 34 of the Act, 1970, empowers the appropriate Government to exempt in special cases the applicability of the provisions of the Act, 1970 to any establishment or class of establishment or any class of the contractors.

27. Section 35 of the Act, 1970 empowers the appropriate Government for framing of the rules. The rules have been framed under the Act, 1970 known as Contract Labour (Regulation and Abolition) Central Rules, 1970.

28. Having glance at the relevant provisions of the Act, 1970, now I may proceed to consider the submissions made by the petitioners in the special civil application as well as by the learned counsel for the respondents.

29. Section 10 of the Act, 1970 nowhere lays down that before issuing the notification prohibiting the employment of Contract Labour in any process, operation or other work in any establishment, it is obligatory on the part of the Central Government to give notice or opportunity of hearing to the affected persons. Where the statute nowhere contemplates for giving of any notice or opportunity of hearing to the affected persons then the principles of natural justice cannot be made applicable in such matters. It is for the legislature to make a provision for giving notice or opportunity of hearing to the affected persons before issuing the notification by the Central Government under section 10 of the Act, 1970 but if this opportunity is not provided under the statute then merely because the petitioners may be the affected persons by the notification issued by the Central Government under the aforesaid provision, the principles of natural justice cannot be put into service. The petitioners are unable to cite and point out any provision from the Act, 1970 or any judgment of this Court or any other High Court or of the Supreme Court wherein it has been held that before issuing the notification under section 10 of the Act, 1970, it is obligatory on the part of the Central Government to give notice and opportunity of hearing to the affected

persons. The first contention raised by the petitioners in the special civil application is without any substance and the same is rejected.

30. The second contention is equally of without any merits. The words used in section 10 of the Act, 1970 by the legislature "prohibit, by notification in Official Gazette, employment of contract labour in any process, operation or other work in any establishment" are sufficiently wide and the Central Government under the aforesaid provision was within its competence to prohibit all the employment of contract labour in any process, operation or other work in any establishment in the country. The notification impugned in this special civil application prohibits the raising of minerals including breaking, sizing, sorting of Limestone or Dolomite. So the establishments which are dealing with these two minerals throughout the country are covered by this notification. The petitioners have failed to cite any provision from the Act, 1970 or any decision from any High Court or the Supreme Court in support of this contention.

31. Another contention raised that in the country there are hundreds of Limestone and Dolomite mines located in different states and they produce different grades of Limestone/Dolomite and as such the total prohibition or abolition of contract labour system in Limestone and Dolomite is violative of Article 14 of the Constitution is concerned, it is suffice to say that it is for the Central Government to take the decision under sec.10 of the Act, 1970 after consultation with the Central Board and while issuing the said notification it is too difficult to accept that the Central Government would not have taken into consideration all aspects. Otherwise also, merely because different grades of Limestone and Dolomite are being produced by the mines situated in different States of the country, I fail to see any justification in this contention of the petitioners that no prohibition could have been put on the employment of the contract labour in the Limestone and Dolomite mines. This contention is also devoid of any substance. From the reply filed by the respondents, it is clear that regarding living and working conditions of the workmen the committed appointee for the purpose has gone on the subject in detail and the details will be given in the later part of this judgment while dealing with the contention of the petitioners that before making the impugned notification, the Central Government has not taken effective consultation of the Central Advisory Contract Labour Board.

32. The contention that before issuing the impugned notification, the Central Government has not made effective consultation with the Central Advisory Contract Labour Board is again a contention raised without there being any sufficient factual foundation made out by the petitioners in the petition. This contention has been made by drawing some inference or some presumption on the basis of the fact that the Central Government on the demand made by the petitioners refuses to part with any information with respect to the alleged consultation and the report if any submitted by the Central Board to it.

33. The second part of the contention raised by the petitioners in the special civil application has to be dealt with first. The petitioners have failed to point out any provision either from the Act, 1970 or the rules framed thereunder which puts an obligation on the part of the Central Government to part with any information with respect to the consultation which is made with the Central Advisory Contract Labour Board before making notification under sec.10 of the Act, 1970. Similarly, I do not find any provision in the Act, 1970 or the rules framed thereunder where the copy of the report submitted by the Central Advisory Contract Labour Board to the Central Government has to be furnished to the petitioners. It is advantageous to mention here that the notification made by the Central Government under sec.10 of the Act, 1970 is not appealable or revisable. However, what sec.10 of the Act, 1970 has contemplated is that the notification under the said section prohibiting the employment of contract labour in any process or operation or any work in any establishment can only be issued after consultation with the Central Advisory Contract Labour Board. So the requirement of law is that the consultation with the Central Advisory Contract Labour Board is to be made by the Central Government before issuing the notification. The power of judicial review of this Court under Article 226 or 227 of the Constitution in such matters are very very restricted and this Court will not act or sit as a appellate authority over the decision of the Central Government taken under sec.10 of the Act, 1970 prohibiting the employment of contract labour in any process, operation or other work in any establishment. The power of judicial review of this Court under Article 226 or 227 of the Constitution in such matters may be available only where the Court is satisfied that the consultation was not made by the Central Government with the Central Advisory Contract Labour Board before making the notification under sec.10 of the Act, 1970 or where the decision taken by the

Central Government under the aforesaid provision is perverse. In the present case, the respondents have filed reply affidavit and therefrom it is clearly borne out that this matter has been gone into by the Central Advisory Contract Labour Board at length and Board after considering all the aspects of the matter has submitted its report to the Central Government and thereafter the impugned notification has been issued. So in the presence of this fact on the record of this special civil application, it is difficult to accept the contention of the petitioners that the effective consultation was not made by the Central Government with the Central Advisory Contract Labour Board.

34. The contention of the petitioners is not that the Central Government has not made any consultation with the Central Advisory Contract Labour Board before making the notification under sec.10 of the Act, 1970. What the petitioners contended in this special civil application is that the Central Government has not taken the effective consultation. I fail to see what the petitioners really mean to convey to the Court by using the words, "effective consultation". In reply to the special civil application, the respondent, Central Government has come up with a case that under sec.5 of the Act, 1970, a committee was appointed to go into the question of working of Contract Labour System in the Limestone and Dolomite mines in the country with terms of the reference as stipulated therein vide resolution dated 20th January, 1986. The committee has decided to collect the relevant information from the cross-section of mines, captive or non-captive spread over the country. The information/data were put by the 25 mine owners/management including M/s. Tata Chemicals Limited, Ranavav, District Junagadh - captive mine attached to soda ash plant, the petitioners herein. The data were not only related to the annual production in different areas, number of contract labourers, number of regular workers, nature of work etc., but also related to the welfare amenities provided to the workers. Apart from the collection of statistical data from the mine owners/managements, the committee visited five states i.e. Orissa, Madhya Pradesh, Rajasthan, Andhra Pradesh and Karnataka. The committee visited these States which were selected to represent the various regions of the country, keeping in view different climatic and geographical conditions, availability of Limestone and Dolomite etc.. To the extent possible, the committee selected a cross-section of mines operated by public sector and private sector representative both big mines and small establishments. The committee has also held

meetings with the representatives of the mine workers/unions and the representatives of the management. The committee has also held common discussions with the representatives of the management and workers or some time separate discussions were held with the unions. It also visited labour colonies and had seen their living conditions. The position regarding working conditions, welfare measures etc., were also ascertained by the committee from the representatives of the employers and reasons for the shortfall of the statutory requirement were also ascertained from them. One of the points emphasised by one and all was regarding employment of contract labour in operations, which were regular and permanent in nature and which formed the main and the basic operation necessary for running the industry. The workers had also brought into light the mines where the principal employers had employed direct labour in certain operations in part of the mines, whereas the same kind of operations in the same mines were entrusted to the contract labour. The committee observed that in majority of the mines statutory welfare amenities like provisions of drinking water, first aid, urinals and latrines, washing facilities, canteens etc. were not provided. In some of the mines where these facilities had been provided, they were not upto the prescribed standard. The further facts stated in the reply are also material to be referred. Normally, three member tripartite committee from amongst the members of Central Advisory Contract Labour Board representing the employers, workers and Government are constituted to go into the question of working of contract labour system, but in the present case considering the vital interest and vast number of Limestone and Dolomite mines in the public and private, both captive and non-captive, spread all over the country, and a number of user industries, seven member committee was constituted to go into the question of working of contract labour system in Limestone and Dolomite mines in the country. It comes out from the constitution of the committee that the National Mineral Development Corporation Ltd., Federation of Indian Mineral Industries were represented from the employers side and Indian Mine Workers' Federation and Indian National Mine Workers represented the workers side apart from Steel Authority of India and Indian Bureau of Mines. Later on Shri Y.H. Dalmia, President, Dalmia Cement ((Bharat) Limited was appointed as member representing Federation of Mineral Industries in place of Shri Y.R. Goenka. So major industries like steel, cement which consume about 90% of Lime stone and Dolomite produce in the country as well a the Federation of Indian Mineral Industries, a body corporate which represents the mineral

industry as a whole were represented on the committee as well as Central Advisory Contract Labour Board. It was for the various Limestone and Dolomite Mines, both captive and non-captive, to present their view point through their Federations which had represented them on the committee itself.

35. After making an in-depth study of the Central labour system in the Limestone and Dolomite mines and the validity of availability of essential amenities, like drinking water, first aid, shelters, urinals, latrines, washing facilities, canteens, creches etc. the committee submitted the report recommending the prohibition of employment of contract labour in the Limestone and Dolomite mines in the country. The report submitted by the committee was placed before the Central Advisory Contract Labour Board. After consultation with the Central Advisory Contract Labour Board and following the process of law and keeping in view the guideline laid down in clauses (a) to (d) of sub-section (2) of section 10 of the Act, 1970, the Central Government issued the notification dated 17-3-1993. These facts stated by the respondents in the reply are uncontroverted a no rejoinder to the same has been filed by the petitioners.

36. The respondents have given a specific reply to the point regarding living and working conditions of the contract labourer employed in Dolomite and Limestone mines. After examining the matter, the committee has opined that there was exploitation of the contract workers engaged in Limestone and Dolomite mines. It has further been observed that the regular workers engaged by the petitioners in their captive mines are getting H.R.A., working conditions allowance in few categories, canteen allowance, washing allowance along with the basic salary plus D.A. plus Fixed D.A.. The temporary workers are getting basic salary plus fixed D.A.. Few contract labourers are paid on lease-rate wages and few were paid on time rate wages fixed by the rate of minimum wages prescribed by the Government. It is further found that in mines contract labourers and company's departmental workers are working simultaneously in different areas of work and allowances drawn by both the categories is different. It was observed that while average daily wage paid to contract labour ranges between Rs.25-63 to Rs.36-12, the average daily wage paid to the departmental workers ranges between Rs.84-24 to Rs.204-72. It is found further that while company's departmental workers engaged in different mines range between 2 to 6, the number of contract workers engaged in those mines range between 2 to 79.

37. The net result of the aforesaid discussion is that the contention of the petitioners in the special civil application that before issuing the impugned notification the Central government has not taken effective consultation with the Central Advisory Contract Labour Board is without any merits.

Re:Contention No.6

38. Section 10 (2) of the Act, 1970 provides the relevant factors to be taken into consideration before issuing the notification under subsection (1) of the said provision. These provisions came up for consideration before their Lordships of the Hon'ble Supreme Court in the case of State of Karnataka vs. Ranganatha Reddy reported in 1977 (4) SCC 471. While interpreting the expression used in sub-section (2) of section 10, 'shall have regard to' their Lordships of the Hon'ble Supreme Court held that the expression only implies a guidance and not a fetter.

39. The aspect as required to be gone into under sub-section (2) of section 10 has been gone into by the committee which has been constituted under section 5 of the Act, 1970 and at least the petitioners have been given sufficient opportunity to make their submissions. The petitioners in fact have been consulted by the committee in the matter as it is clearly borne out from para -9 of the reply to the special civil application. It is stated by the respondents that information/datas were furnished by mine owners/management including M/s. Tata Chemicals Limited, Ranavav, Dist. Junagadh, captive mines attached to soda ash plant. So it is not correct to say on the part of the petitioners that while issuing the impugned notification under sec. 10 of the Act, 1970, the Central Government did not have any regard to the factors mentioned in sub-section (2) of the aforesaid section with reference to the Lime stone and Dolomite mines in the country in general and much less with respect to each particular establishment. At least in view of the reply which has been filed by the respondents, this grievance cannot be raised and could not have been raised by the petitioners.

Re : Contention No.7

40. This contention is again equally of without any substance. From the reply which has been filed and which is uncontroverted that the committee has considered the working conditions and benefits provided for the contract

labours in the Limestone and Dolomite mines and it has come to conclusion that it was essential to prohibit the employment of contract labour system with a view to avoid the exploitation of contract labour engaged by different mines and industrial units. The details of the working conditions and benefits provided to the contract labour have been dealt with by me while dealing with the contention of the petitioners that the notification has been issued under section 10 (1) of the Act, 1970 without any effective consultation with the Central Advisory Contract Labour Board. It is not necessary to repeat all those aspects again. So this contention of the petitioner is also without any substance.

Re : Contention No.8

41. The first sub-contention of this contention is of no merits. From the record of the special civil application it is clear that the committee after making study of contract labour in the Limestone and Dolomite mines submitted its detailed report in which all aspects have been examined and the said report was placed before the Central Advisory Contract Labour Board and after consultation with the said Board, the notification has been issued. The petitioners has raised all these contentions as if this Court has to act as a Court of Appeal. After going through the reply to the special civil application, I am satisfied that the committee has examined all the relevant factors and material in depth and only thereafter it has prepared its report and recommended for the prohibition of contract labour in the scheduled works. It is not necessary to repeat all these factors again.

42. Similarly, the sub-contentions No.2 and 3 are also of no substance. The tripartite committee constituted by the Central Advisory Contract Labour Board for the purpose of examining the abolition of contract labour had made in depth study about the working in the Limestone and Dolomite mines and thereafter recommended for abolition of Contract labour. I find sufficient merits in the contention made by the counsel for the respondents that the contention of the petitioners that in case of closure of mines, enforced idleness of labour would cause a serious problem is hypothetical in nature and is untenable. Similarly, the sub-contention No.3 of contention 8 is equally not tenable. After considering the report submitted by the Committee to the Board and after consultation with the Board, the Central Government has issued the notification in the larger interest of public and as such this contention cannot be accepted.

Re : Contentions No.9, 10 and 11.

43. I am taking up these three contentions together as they are closely related to each other. So far as the contention that the Central Government did not have regard to the conditions of work and benefits provided for the labours in the establishment is concerned, it is suffice to say that this aspect of the matter has been gone into in depth by the committee and the committee has found that this class of labourers have been exploited and they have not been provided with the sufficient welfare facilities as well as their wage structure etc. is also considerably of miserable condition. It is true that because of this prohibition of the employment of contract labour in the scheduled works, there may be some unemployment in the remote and rural areas but a larger question does arise - whether the employers and contractors should be permitted to exploit this class of persons. The larger public interest involved and when it has been found as a fact that in the Limestone and Dolomite mines the contract labourers are being exploited then the Central Government has not committed any error in prohibiting the employment of contract labour in the scheduled works. The balance has to be drawn in between the exploitation of the contract labourers and there may be some unemployment in the remote and rural areas because of the abolition of the contract labour in the scheduled works. At the cost of exploitation, the point of unemployment cannot be given that much of the effect as what the petitioners have sought to be contended. In fact the petitioners are benefitted by this system of contract labour employment and that is the reason that they have come up with this special civil application. The shocking figures which have come on record from the report of the committee that the petitioners are employing more number of contract workers than the regular workers and the wide difference in between these two class of persons is also shocking.

44. This is a welfare legislature and in case the Central Government considers on the basis of the recommendations of the Central Advisory Contract Labour Board which recommendations are based on the report of the tripartite committee constituted by it comes to the conclusions that it is in the interest of the contract labours that the employment of contract labour in the scheduled works should be prohibited, that decision cannot be said to be arbitrary or perverse by this Court sitting under Article 226 or 227 of the Constitution.

45. Now only remains the last contention of the petitioners that the action of the respondent of revoking and cancelling the licence of the petitioner No.3 as well as revocation of the certificate of registration of the petitioner-Company is highly arbitrary and unjustified. It is suffice to say that this contention has to be considered with reference to two facets. Firstly, the orders of cancellation of the licence of the petitioner No.3 as well as the revocation of the certificate of the registration of the petitioners are appealable under the provisions of the Act, 1970. Secondly, the impugned notification has been amended subsequently and in view of this changed circumstances there may be some justification in the claim of the petitioners that the licence and the certificate of registration as a whole of the contractor and petitioner-Company would not be justified. But still one more aspect has to be noticed and that is that the licence and the certificate of registration has been revoked and cancelled in the month of January, 1994 and May, 1993. This Court has not protected the petitioners by grant of interim relief. So for all these years, the petitioners are not having any certificate of registration and similarly the contractor is not having any licence. The revocation and cancellation of the licence of the petitioner No.3 and certificate of registration of petitioner-Company after prohibition of employment of contract labour in the scheduled works vide impugned notification and no exception can be taken to this action when there was total prohibition of the employment of contract labour in the Limestone and Dolomite mines. The petitioners have though taken the plea that before cancellation and revocation of the licence and certificate of registration opportunity of hearing has not been given and I do not find from the reply that such an opportunity has been given. The substance of the matter has to be considered. The licence to the petitioner No.3 was given under sec. 12 of the Act, 1970. The revocation and cancellation of licence in the facts of this case at one point of time was automatic in fact for which no notice or opportunity of hearing is required to be given to the licensee. Similar is the case with the registration granted to the company under sec.7 of the Act, 1970. However, both these orders were appealable under sec.15 of the Act, 1970.

47. Section 15 of the Act, 1970 provides that any person aggrieved by an order made under Section 7, Section 8, Section 12 or Section 14 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to an appellate officer who shall

be a person nominated in this behalf by the appropriate Government.

48. The revocation of the licence has been provided under sec.14 and similarly, the revocation of a certificate of registration has been provided under section 8 of the Act, 1970. So both these orders are appealable.

49. Section 8 of the Act, 1970 provides that if the registering officer is satisfied, either on a reference made to him in this behalf or otherwise, that the registration of any establishment has been obtained by misrepresentation or suppression of any material fact, or that for any other reason the registration has become useless or ineffective and, therefore requires to be revoked, the registering officer may, thereafter pass an appropriate order.

50. The contention is sought to be raised that the revocation of the registration could have been only where the establishment has obtained the same by misrepresentation or suppression of any material fact, but this contention is not wholly correct. The revocation of registration is also permissible where for any other reason the registration has become useless or ineffective. In the present case, as stated earlier, the Central Government has prohibited the employment of Contract Labour in the scheduled works in Limestone and Dolomite mines under the impugned notification then this certificate of registration granted to the petitioner-company has become useless or ineffective and in such cases I fail to see any justification in the contention of the petitioners that an opportunity of hearing has to be given. However, in the case of licence granted to the contractor under section 13 of the Act, 1970, the revocation is there under section 14 and that revocation is only permissible on the ground where it is obtained by misrepresentation or suppression of material fact or the holder of the licence has without reasonable cause failed to comply with the condition subject to which the licence has been granted or as contravened any of the provisions of the Act or Rule made thereunder. In the present case, none of the aforesaid ground is available and nor it could have been put into service as I do not find anything in the reply that the petitioner No.3 has taken the licence by misrepresenting the facts or by suppression of facts or it has otherwise contravened any terms of the licence. But that grievance of the petitioner No.3 cannot be accepted as this order was appealable which remedy he has not availed of.

51. Taking into consideration the totality of the facts of this case and the further fact that the impugned notification has subsequently been modified if still some grievance of the petitioners survives in respect of the revocation of licence and cancellation of certificate of registration, it is open to them to file an appeal against these orders before the appellate authority and in case such an appeal is filed within a period of one month from today, the same shall not be dismissed on the ground of limitation and be decided on merits.

52. In the result, all these special civil applications fail and the same are dismissed. Rule in all these special civil applications stand discharged subject to aforesaid direction with no order as to costs.

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